**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 22169 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE JAYANT PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**VADODARA CITY MUSLIM CO-OP SOCIETY LTD - Petitioner(s)**
**Versus**
**ADDITIONAL REGISTRAR (APPEAL) & 11 - Respondent(s)**

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**Appearance :**
MR SHIRISH JOSHI for Petitioner(s) : 1 - 10.
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
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**CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**

**Date : 20/03/2006**

**ORAL JUDGMENT**

1.Rule. Ms. M.S. Panchal, learned A.G.P. waives service of notice of Rule for the respondent Nos.1 and 2 and Mr.Vyas, learned counsel for

newly added respondent No.3 (Applicant of Civil Application No.12125 of 2005.).

2.The petitioners have preferred the petition for challenging the order passed by the District Registrar and its confirmation thereof by the Additional Registrar (Appeals) whereby, the appointment of the custodian is made under Section 74D of the Gujarat Co-operative Societies Act (hereinafter referred to as the 'Act').

3.I have heard Mr. Shirish Joshi, learned counsel appearing for the petitioners, Ms. Panchal, learned A.G.P. for the State Authority and Mr.Vyas, learned counsel for the private respondent.

4.It appears that it is the case of the petitioners that the election was held, but since there was no nomination for the members of the Managing Committee, the Society passed the resolution of co-option of certain persons as the vacancies were available and the bye-

laws provided for co-option. It also appears that the formal show cause notice under Section 74D of the Act was not issued, but the society was intimated for hearing and the order for appointment of custodian under Section 74D of the Act is passed. It also appears that as per the respondent-authorities, during the course of hearing, the President and the Secretary of the society did consent for appointment of the custodian.

5. After some arguments, it was declared by Mr.Joshi, learned counsel appearing for the petitioners that the society has no objection if the election of the members of the Managing Committee is held by some officer who may be nominated by the District Registrar in association with the office bearers of the petitioner society.

6.Mr. Vyas, learned Counsel appearing for the original complainant and now for respondent No.3 herein, has also no objection if the

election is held by some independent body.

7. Considering the above, as such, it appears that the proper procedure for appointment of the custodian under Section 74D of the Act is not followed. However, there is dispute on the aspects of the consent of the office bearers of the society namely the President and the Secretary. Even if the office bearers of the society have consented namely President and Secretary, order for appointment of the custodian is also to adversely affect the other members of the Managing Committee. Therefore, it prima facie appears that the impugned order of appointment of the custodian cannot be said to be legal and valid. However, the major purpose of the exercise of the power under Section 74D of the Act is to see that there may not be any vacuum and the delay may not be caused in holding of the election. Since the declaration as recorded hereinabove is made by the learned counsel appearing for the

petitioners that the society is ready to hold the election not only of the post of three members of the Managing Committee which would become due on 31.03.2006, but also is ready to hold the election of other three members who were co-opted in the year 2004-2005. Therefore, I find that if ultimately, the election is held by some independent body and the newly elected persons are also allowed to hold the office, there may not be any requirement of exercise of power under Section 74D of the Act for appointment of the custodian and such question may result into academic exercise, if ultimately the election is held.

8. In view of the above, I find that the following directions shall meet with the ends of justice:-

A. The District Registrar-respondent No.2 herein shall nominate any officer from his office not below the rank of Assistant

Registrar for holding the election of three seats for the years of 2005-2006 having term for two years and for three seats for the years 2006-2007 having term of three years, total 6 seats.

B. The officer who may be nominated as indicated hereinabove, shall hold the election in association with the office bearers of the petitioner-society, at the cost of the petitioner-society. The process of the election shall be completed preferably within a period of two months.

C.The newly elected members shall be allowed to assume the office after the process of the election is completed and the result is declared.

9.In view of the aforesaid directions, the order of appointment of custodian under Section 74D of the Act and its confirmation thereof by the

Additional Registrar (Appeals) would not survive.

10.The petition is disposed of in terms of the aforesaid directions. Rule is discharged. Direct service is permitted.

(JAYANT PATEL,J.)

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